* THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.5930 of 1997

% 29-12-2004

A.P.S.R.T.C. EMPOLYEES CO-OPERATIVE BUILDING SOCIETY KURNOOL (REGD.No. 1542) REP., BY ITS SECRETARY, K. VEERANNA, S/o Husenaiah, 57 years, occ: Senior Traffic Inspector, A.P.S.R.T.C. KURNOOL II-Depot.

Petitioner

Vs.

$ Government of Andhra Pradesh Rep. by its Secretary, Revenue Department, Secretariat, Hyderabad and others

Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Mr.T.Bali Reddy

^ Counsel for respondents : Government Pleader for Revenue

?CASES REFERRED :

[1] (1880) ILR 5 Cal. 669

[2] (1905) ILR 29 Bom. 580

3 1952 SCR 43 = AIR 1951 SC 469

[4] AIR 1968 S.C. 718

5 1972(3) SCR 711 = AIR 1972 S.C. 1311

[6] AIR 1979 S.C. 621

[7] AIR 1990 A.P. 331

[8] 1990(2) S.C.J. 10

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 5930 of 1997

Between:

A.P.S.R.T.C. EMPOLYEES CO-OPERATIVE BUILDING SOCIETY KURNOOL (REGD.No. 1542) REP., BY ITS SECRETARY, K. VEERANNA, S/o Husenaiah, 57 years, occ: Senior Traffic Inspector, A.P.S.R.T.C. KURNOOL II-Depot.

..... PETITIONER

AND

1. **Government of Andhra Pradesh Rep. by its Secretary, Revenue Department, Secretariat, Hyderabad.**
2. **The District Collector, Kurnool.**
3. **Revenue Divisional Officer, Kurnool.**
4. **Mandal Revenue Officer, Kurnool.**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing the Endorsement (L.P.CMP/27/S.A./97) dated 18-2-1997 whereunder proposing to auction the land in Sy.No.473 and 460 of Dinnedevarapadu village which was allotted to the petitioner-Society as House sites as illegal, arbitrary violative of principles of natural justice, null and void and consequently direct the respondents to assign the land admeasuring Ac.24-50 cents out of the Sy.No.396 which is demarcated as Sy.No.473 after its sub-division and Ac.5-55 cents in Sy.No.460 of Dinnedevarapadu village, Kurnool District, in favour of the individual members - allottees of the Petitioner-Society.

Counsel for the Petitioner:MR.T.Bali Reddy

Counsel for the Respondents: GP For Revenue

The Court made the following :

ORDER:

The A.P.S.R.T.C. Employees Co-operative Building Society, Kurnool, represented by its Secretary filed the present Writ Petition against the respondents praying for issuance of a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent in issuing the endorsement L.P.CMP/27/S.A./97 dated 18-2-1997 proposing to auction the land in Sy.No.473 and 460 of Dinnedevrapadu village which was allotted to the petitioner-society as house sites as illegal, arbitrary, violative of principles of natural justice, null and void and consequently direct the respondents to assign the land admeasuring Acs.24-50 cents out of S.No.396 which is demarcated as Sy.No.473 after its Sub-Division

and Acs.5-55 cents in Sy.No.460 of Dinnedevarapadu village, Kurnool District in favour of the individual members-allottees of the petitioner-society and to pass such other suitable orders.

Sri T.Bali Reddy, learned Senior Counsel representing the petitioner-society advanced submissions at length tracing the events commencing from Rc.A11.6174/72 dated 3-4-1972 till date and would contend that in the light of the facts and circumstances of the case it is a clear case where the doctrine of promissory estoppel is applicable to the facts of the case and hence the Government cannot go back on the proposals to allot these lands in favour of the petitioner-society and the members of the said society and hence the proposed auction contrary to the promise already made is arbitrary, illegal and also unconstitutional being violative of Article 21 of the Constitution of India. The learned Senior Counsel also had drawn the attention of this Court to proceedings Rc.No.B-6/1052/93 D-1, dated 7-9-1994, Rc.(E1)/1052/93, dated 29-3-2000, Rc.No.E(1)/1052/93, dated 13-7-2000 and Rc.No.E1/2682/2003 dated 1-9-2003 and the grounds raised in the affidavit filed in support of the Writ Petition and also the stand taken by the respondents in the counter affidavit. The learned Senior Counsel would conclude that in the facts and circumstances of the case, the proposed auction is not justified and the Government may have to keep up the promise and finalise the allotments in favour of the petitioner-society and its members.

Per contra, the learned Government Pleader for Revenue had pointed out the lapses on the part of the petitioner-society in complying with the conditions which had been imposed in the proceedings Rc.A11/6174/72 dated 3-4-1972 and in the light of the subsequent policy decision the Government is well justified in dropping the proposals and further proceed with the proposed auction for the purpose of securing the maximum finance to the Government by putting the property to auction. The learned Counsel also had taken the Court through the contents of the counter affidavit in detail and would conclude that in view of the specific policy which had been referred to in the counter affidavit just on the strength of the proposals already made, the writ petitioner is not entitled to the relief prayed for and hence the Writ Petition is liable to be dismissed.

Heard the Counsel.

The secretary of the petitioner-society, a registered society consisting of the employees of A.P. State Road Transport Corporation, Kurnool, hereinafter in short referred to as “APSRTC, Kurnool” had sworn to the affidavit filed in support of the Writ Petition. It is averred that the members of the society, the employees, are all poor persons with no houses of their own and they have been residing in the rented premises at exorbitant rents and have been facing harassment from the greedy landlords and their salaries are also hardly sufficient to maintain their family and to meet the educational needs of their

children and with a view to secure the residential accommodation these employees formed a society registered as “R.T.C. EMPLOYEES COOPERATIVE HOUSE BUILDING SOCIETY LTD., KURNOOL” under A.P. Co-operative Societies Act. It is further averred that the petitioner requested for assignment of house sites to its members. The District Collector, Kurnool District, permitted the Secretary of the petitioner-society to enter upon Acs.24-50 cents in S.No.396 and Acs.5-55 cents in S.No.460 of Dinnedevarapadu village for distribution of the same to 357 members pending finalisation of all the formalities and subject to the payment of market value to be fixed. The Secretary who had sworn to this affidavit was then the Treasure of the said society. The proceedings of the Collector in Rc.A.11/6174/72 dated 3-4-1972 stipulated the following conditions:

i. No body should sell away the plot allotted to others;

ii. House should be built in five years time;

iii. Layout with 60’ x 40’ size plots should be got approved by the Revenue Divisional Officer, Kurnool;

iv. The plot number to each individual should be got assigned by Revenue Divisional Officer as per the lay out approved.

It is further averred that the Revenue Divisional Officer, Kurnool approved the lay out plan in S.Nos.396 and 460 measuring Acs.30-

05 cents of Dinnedevarapadu village as per L.Dis.4963/92 dated 16-11-1992. Further the Revenue Divisional Officer, Kurnool approved the list of beneficiaries (members of the Society) after obtaining certification of the same from Regional Manager, A.P.S.R.T.C. Cuddapah and submitted to Collector with lay-out plan. The proceedings Rc.379/93 dated 12-11-1993 also stated that the land is situated on a hillock and fit for house sites and it is free from encroachment. The value of the land was fixed at Rs.7000/- per acre after inspection along with the Mandal Revenue Officer and Mandal Surveyor of Kurnool. It was further averred that the land in S.No.396 was sub-divided by the Mandal Surveyor and approved by the Mandal Revenue Officer, Kurnool on 18-12-1993. The Assistant Director of Survey and Land Records scrutinized the sub-division and issued proceedings Rc.A11/4/94 dated 1-2-1994. It is a waste land. The sub-divided extent of Acs.24-50 cents was assigned in S.No.473. In pursuance of the sub-division effected to allot the land so sub-divided as house sites to the members of the society, the Mandal Revenue Officer, Kurnool published notice on 8-2-1994 in Dinnedevarapadu village where it is situated, by beat of drum and affixture and the relevant notice is Rc.B.2031/92.

It is further stated that the Mandal Revenue Officer, Kurnool by proceedings Rc.B.2031/92 dated 8-2-1994 sought the approval of Gram Panchayat and the Gram Panchayat at its meeting on 10-2-

1994 gave its approval by means of resolution to the proposal of Mandal Revenue Officer. Subsequent thereto the Mandal Revenue Officer, Kurnool submitted to the District Collector, the duly filled up questionnaire and plan on 24-4-1994 recommending acceptance. The District Collector, Kurnool sent a comprehensive report enclosing all the above records to the Government with a letter in Roc.1052/93 dated 11-6-1994 and the relevant portion of the said letter reads as follows :

> "The Revenue Divisional Officer has approved the lay-put plan. The beneficiaries list has been approved and signed by the Revenue Divisional Officer, Kurnool, Regional Manager, APSRTC, Cuddapah and Mandal Revenue Officer, Kurnool. The undertaking (affidavit) from each member to the effect that they are not having house or house sites within the radius of 8 K.Ms. from Kurnool town and they have accepted to pay the M.V. fixed by the Government. The affidavits are countersigned by the Notary.
>
> The proposed Market Value @ Rs.7000/- per acre for an extent of Acs.30-05 worked out to Rs.2,10,350/-, the monetary limits for fixation vests with the Government."

The Commissioner of Land Revenue in his proceedings CLR's Ref.No.Spl.B-4/1524/94 dated 13-7-1994 asked the Collector to explain the reasons for delay and sought detailed report. The Collector, Kurnool submitted his Report in Rc.B-6 1052/93 D-1 dated 7-9-1994 and in the said report certain other aspects were recorded which are as follows :

> "The land is a hill block consisting waste area of Ac.900.39

acres, the area required has been sub-divided from big block, formed a new field assigning, new i.e., S.No.473 (Extent 24-50). For this purpose, time has been taken in observing necessary formalities under S & B Act.

Statutory time limit has been taken for observing formalities for submitting transfer proposals and gathering of sales of the lands in the vicinity etc."

It is also further averred that the Commissioner of Land Revenue fixed the market value and submitted the same to the Government to issue G.O. and it was pending though all procedures and formalities required for issuance of G.O. were completed as per Rules and Regulations. It is further stated that the petitioner has been expecting communication calling upon the members to deposit the market value. The respective plots of 372 members of 551 x 40' (5 cents) are also demarcated for issuing individual assignment of the extents to each of them. It is further stated that the Revenue Divisional Officer, Kurnool on 28-8-1996 had sent a report to the District Collector in Rc.939/96 dated 28-8-1996 recommending market value of Rs.15,000/- per acre, even though the basic market value as per the records of Sub-Registrar was only Rs.7500/- per acre. The Collector, Kurnool on 19-2-1997 informed the petitioner-society that it was proposed to auction the lands agreed to be assigned to the members of the petitioner-society and with that money it is proposed to add two more storeys to the Collector's building. The said decision taken to further proceed with the public auction of the large extent of land

inclusive of the land in question had been questioned in the present Writ Petition.

A counter affidavit in detail had been filed wherein none of the facts referred to in the affidavit filed in support of the Writ Petition had been denied. The stand taken by the Government in the counter affidavit is that the Government have directed the Collector to secure finance for construction of Government office buildings by putting the Government waste lands to public auction. Further the Government by G.O.Ms.No.234, Revenue (Assignment-I) Department dated 4-5-1995 issued orders for selection of the Government lands for sale in public auction for raising funds. During the Joint Collector's meeting held at Hyderabad on 16-5-1996, the Special Chief Secretary and Commissioner of Land Revenue, A.P., Hyderabad while reviewing the progress of the receipt of proposals of selection of surplus Government lands for sale in public auction for construction of Government buildings in the existing complex instructed to expedite proposals of lands available in the District and to furnish the particulars of the lands. Therefore a report was submitted to the Commissioner of Land Revenue, A.P. Hyderabad in Rc.B6-1052/93 dated 8-2-1997 stating that the lands in question including all other Government lands are proposed for public auction to raise funds for construction of third and fourth floors of Collectorate, Kurnool and recommended to drop the said proposal. At this stage, the Secretary

of the petitioner-society had put in a petition dated 13-1-1997 to the Kurnool Chief Minister's Grievance Cell, A.P., Hyderabad requesting for consideration of the lands in question to alienate in the name of the petitioner-society for distribution of house sites to 357 beneficiaries. The application was forwarded to the Collector, Kurnool in C.M.P.No.1604/KCMP(O)/97 dated 16-1-1997 for taking necessary action and to inform the applicant about the action taken on the petition. In response to the above, the applicant was informed through Collector's Grievance Cell in L.Dis.CMP/27/SA/97 dated 18-2-1997 that the lands in question are proposed for public auction to raise funds for the construction of third and fourth floors in Collector's complex, Kurnool. Aggrieved by the same the present Writ Petition had been filed. It was also further averred that it is a fact that permission was granted to the members of the petitioner-society to enter upon land in S.No.396 to an extent of Acs.24-50 cents and in S.No.460 to an extent of Acs.5-55 cents of Dinnedevarapadu village of Kurnool Mandal on payment of market value to be fixed by the Government in the year 1972 pending finalisation of the formalities imposing condition that houses should be built in five years. But however the petitioner society did not submit beneficiaries list and the affidavits of their members till 17-5-1993 stating that the site allotted to them is at a distance of more than 10 K.Ms. from the town and the site is a hillock and they did not take proper interest for getting regular

house site pattas even after 21 years. Several other details also had been narrated in the counter affidavit. It was further stated that permission was granted to the petitioner-society on 3-4-1972 through proceedings referred to supra to enter upon the land pending finalisation of all formalities and subject to the payment of market value fixed by the Government and simultaneously proposals were also called for from the Revenue Divisional Officer for assignment of house sites to 357 persons but however the petitioner-society did not submit affidavits of their members for grant of house sites till 17-5-1993 expressing certain difficulties. Thus it is clear that the petitioner-society has no interest either to occupy the said site relating to which permission was granted. Subsequent thereto, proposals relating to the transfer of classification of land also had been referred to and it was specifically stated that it is only due to the negligence and delay in submitting the affidavits to the Government on the part of the petitioner-society, decision was taken to put these lands by way of public auction to raise funds. In nut-shell the stand taken by the Government is by virtue of the policy decision and also in the light of the public interest involved, the proposals had been dropped and hence the relief prayed for in the Writ Petition cannot be granted.

It may also be of some relevance to note the proceedings referred to infra. In Rc.B6/1052/93 dated 7-9-1994 addressed by the Collector to the Secretary to Commissioner of Land Revenue, A.P. Hyderabad, it

was specified as hereunder :

"I invite kind attention to the reference cited.

I submit that the permission was accorded to the Secretary, A.P.S.R.T.C. Employees Co-operative Building Society, Kurnool to enter upon the lands in S.Nos.396 and 460 to an extent of Ac.30-05 of Dinnedevarapadu village in this office proceedings Rc.A11.6174/72 dated 3-4-72, pending finalisation of all the formalities and subject to payment of market value fixed by the Government and also to the conditions as already reported in this office reference 1st cited.

The secretary of the said Society in his letter dated 17-5-93 has requested to allot the pattas to their members urgently as some illicit mining operations of digging granite stones is being made.

After inspection on 30-3-94 and 12-11-93 the Mandal Revenue Officer and Revenue Divisional Officer, Kurnool have submitted market value proposals at Rs.7,000/- per acre for assignment of house sites to the A.P.S.R.T.C. Employees and transfer proposals making the land free from encroachments and observing necessary formalities.

The Revenue Divisional Officer has approved the lay out and beneficiary list of 372 members and sent under taking (affidavits) their members countersigned by the Regional Manager, A.P.S.R.T.C., Cuddapah.

After receipt of the proposals from the Revenue Divisional Officer, Kurnool, the Market value proposals were submitted to the Government through Commissioner of Land Revenue, A.P., Hyderabad in this office reference 1st cited.

The Commissioner of Land Revenue in the reference 2nd cited has pointed out the delay in submission of proposals at the proceedings for handing over possession of the proposed land were issued in the year 1972.

In response to this, the reasons for the delay in submitting the proposals are given below.

1. That the A.P.S.R.T.C. Co.op. House Building Society, Kurnool did not submit the affidavits of their members/beneficiaries as per the norms prescribed for grant of house sites till 17-5-93 for which the Secretary of the society stated that the land for house sites allotted to them is at a

distance of more than 10 K.Ms. from Kurnool town and at hillock; the previous body did not take proper interest for getting regular house site pattas.

2. The Society has stated that the present body after taking charge, has initiated proper action in gathering particulars of all members regarding their eligibility as per rules, consent for payment of Market value fixed by the Government etc., in a prescribed proforma.

3. That the APSRTC Employees are scattered and some of the employees have already been retired. Some of them are riped for retirement. Taking view of the minimum benefits to the employees, the present body was actively manned and approached the Government with full particulars.

That in the mean time eviction of temporary occupations i.e., removal of metal by the some unauthorized persons has also been taken up.

4. The land is a hill block consisting waste area of Ac.900.39 acres, the area required has been sub-divided from big block, formed a new field assigning new i.e., S.No.473 (Extent 24.50). For this purpose, time has been taken in observing necessary formalities under S & B Act.

5. Statutory time limit has been taken for observing formalities for submitting transfer proposals and gathering of sales of the lands in the vicinity etc.

6. The verification of beneficiaries lists with reference to the affidavits filed by the members, much time has been taken as the total members are 372. The Revenue Divisional Officer, Kurnool, Regional Manager, APSRTC, Cuddapah and the Mandal Revenue Officer, Kurnool have certified the beneficiaries list after satisfying the norms. The Report of the Mandal Revenue Officer dated 2-8-1994 is enclosed.

I request communication of order in this regards."

Subsequent thereto in the communication from the Collector to the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad in Rc.(E1) 1052/93 dated 29-3-2000, it was specified as

hereunder :

Sub:- Assignment of House sites – Kurnool Mandal – Dinnedevarapadu (v) – Sy.No.473, 460 etc., of extent 30-05 Acs. to APSRTC Employees, Kurnool on payment of M.V. proposals submitted – Orders – Requested – Reg.

Ref:- 1. This office Rc.B6.1052/93 dated 11-6-94.

2. C.C.L.A., A.P., Hyderabad Ref.Spl.B4/1524/94, dated 13-7-94

3. This office Rc.B6.1052/93, dated 7-9-94.

4. C.C.L.A., A.P., Hyderabad., Ref.Spl.B4/1594/94, dated

24-9-1994.

5. Govt.Memo No.67238/Ann-IV(1)/94-I.

6. This office Rc.(B6)1052/93, dated 8-2-97.

7. Interim orders of W.P.M.P.No.7070/97 in W.P.No.5930/97,

dt.26-3-97.

8. C.C.L.A., A.P., Hyd. Ref.Spl.B4/119/2000, dt.1-3-2000.

9. R.D.O., Kurnool Rc.(C) 938/96, dt.10-3-2000.

I invite kind attention to the reference cited and submit that the reference 1st cited proposals were submitted to the Government. Through Chief Commissioner of Land Administration for assignment of house sites to the A.P.S.R.T.C. Employees, Kurnool on payment of M.V. at Rs.7000/- per acre in Sy.No.396 (old), 473 new and 460 of Dinnedevarapadu village of Kurnool Mandal further information has also been submitted in the reference 3rd cited. The proposals was endorsed by Chief Commissioner of Land Administration in the 4th reference cited. Proposing M.V. at Rs.8,500/- per acre. It is further submitted that the Government in this Memo. 5th cited have called for the latest M.V. through the Chief Commissioner of Land Administrative. In the reference 6th cited, the report was submitted to drop the proposal as the land was proposed for public auction to raise the funds for construction of the Collectorate/Revenue office and orders from Chief Commissioner of Land Administration are awaited. Mean while the representatives of A.P.S.R.T.C. employees, Kurnool have filed up in W.P.No.5930/97 in

Hon'ble High Court. The High Court has passed interim orders in the reference 7th cited. A copy order is also enclosed. Counter has been filed and the case is still pending in the Hon'ble High Court.

Further the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad in the reference 8th cited has also requested to intimate the present stage of the Writ Petition.

In this connection that the Revenue Divisional Officer, Kurnool has submitted the latest M.V. proposals in the reference 9th cited reporting that the proposed land is rocky, uneven and unfit for cultivation. But it is fit for house sites. As per the local enquiry and demand of the land for house sites it may be fixed the market value at Rs.50,000/- per acre.

The market value at Rs.50,000/- per acre for an extent of 30-05 Acs. for assignment to the employees of A.P.S.R.T.C. Kurnool may be fixed and orders may kindly be communicated at an early date, for grant of individuals the pattas on payment of market value."

Subsequent thereto in the proceedings Rc.E(1) 1052/93, dated 13-7-2000 addressed by the Collector to the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad it was further specified as hereunder :

Sub:- Alienation of Land – Kurnool District and Mandal Dinnadevarapadu (v), Sy.No.473, 460 etc., an extent of Acres 30-05 cents in favour of APSRTC Employees Co-op. House Building Society – Proposals – Requested – Report submitted – Regarding.

Ref:- 1. This office Rc.B(6) 1052/93, dt.11-6-94.

2. CCLA., A.P., Hyderabad Ref.Spl.B4/1524/94, dt.13-7-94.

3. This office Rc.B(6) 1052/93, dt.7-9-94

4. CCLA, A.P., Hyderabad Ref.Spl.B4/1594/94, dated 24-9-94.

5. Govt.Memo No.67238/Asn.-IV(1)/94-1, dt.13-10-95

6. This Office Rc.B(6) 1052/93, dt.8-2-97

7. Interim orders of W.P.M.P.No.7070/97 in W.P.No.5930/97,

dated 26-3-97.

8. CCLA.,A.P, Hyderabad Ref.Spl.B4/119/2000, dated 1-3-2000.

9. R.D.O. Kurnool Rc.(C) 938/96, Dt.10-3-2000

10.This office Rc.E(1) 1052/93, dt.29-3-2000

11.CCLA., A.P., Hyderabad Spl. (B4) 119/2000, Dt.27-6-2000.

I invite kind attention to the reference cited and submit that in the reference 1st cited proposals were submitted to the Govt. through the Chief Commissioner of Land Administration for assignment of House sites to the A.P.S.R.T.C. Employees, Kurnool on payment of Market Value at Rs.7000/- per acre. In Sy.No.396 (old) 473 New and 460 of Dinnadevarapadu (village) of Kurnool Mandal. Further information has also been submitted in the reference 3rd, 6 and 10th cited. In the reference 11th cited, the Chief Commissioner of Land Administration requested to send the proposals with latest Market Value and combined sketch. In this connection, in continues to this office report 10th cited, I submit that at present the basic value of the land is at Rs.8,700/- per acre, as per the basic valuation register maintained by the Joint Sub-Registrar. The lands proposed is rocky, uneven and unfit for cultivation. But it is fit for house sites. The sales statistics were gathered upto 1999 year, ranging from Rs.7500/- to 9900/- per acre. The sales lands which took place at higher rate are away from the land in question and are even and at the foot of the hill in between village Dinnadevarapadu and Engineering College. As per local enquiry and demand of the land for house sites it is proposed to fix the Market Value at Rs.50,000/- per acre. The sales statistics and combined sketch copies are submitted herewith.

The Market value at Rs.50,000/- per acre for an extent of 30-05 acres for assignment to the Employees of APSRTC. Kurnool may be fixed and orders may kindly be communicated for grant of the pattas on payment of Market value to the APSRTC Employees.”

Subsequent thereto in Rc.E1.2682/2003, dated 1-9-2003 addressed by the Collector to the Secretary, R.T.C. House Building Society it was specified :

> Sub:- Alienation of land – Kurnool Mandal – Dinnadevarapadu village – Sy.No.460 and 473 an extent of 30-05 cents – in favour of APSRTC Employees Co-operative House Building Society – Proposals submitted – Consent – Requested – Regarding.
>
> Ref:- 1. This Office Rc.E1/1053/93, dated 1-12-2000
>
> 2. Govt.Memo No.67238/Asn-IV(1)/94-7, Dated 4-6-2003.
>
> The alienation proposals were submitted to the Chief Commissioner of Land Administration, A.P., Hyderabad as fixing the market value at Rs.5,00,000/- per acre in the reference first cited for House sites to the said society in Sy.Nos.460 and 473 of Dinnedeverapadu village of Kurnool Mandal.
>
> In the reference second cited the Government have requested to obtain consent of the society for the proposed market value at Rs.5,00,000/- per acre for consideration of the proposals.
>
> Hence, you are requested to give consent for the above market value at Rs.5,00,000/- per acre immediately for further action."

As can be seen from the proceeding dated 1-9-2003 referred to supra wherein it was stated that the alienation proposals were submitted to the Chief Commissioner of Land Administration, A.P., Hyderabad fixing the market value at Rs.5,00,000/- per acre to these lands, it is clear that the Government is only interested in securing the highest price possible for these lands. The doctrine of promissory estoppel had not only been adopted in fullness in our country but it had been recognized as affording a cause of action to the person to

whom the promise is made. In this context the early cases which may be referred to are **GANGES MFG.CO. Vs. SOURUJMULL** and **MUNICIPAL CORPORATION OF BOMBAY Vs. SECRETARY OF STATE**. In **COLLECTOR OF BOMBAY Vs. MUNICIPAL CORPORATION OF THE CITY OF BOMBAY** his Lordship Chandrasekhara Aiyer, J (as he then was) expressed the solitary view pointing that the Government cannot be allowed to go back on the representation made by it and opined that it would amount to countenancing the preparation of what can be compendiously described as legal fraud which a court of equity must prevent being committed. This view referred to supra had been approved in **UNION OF INDIA Vs. INDO-AFGHAN AGENCIES .** In **TURNER MORRISON AND CO. LTD. Vs. HUNGERFORD INVESTMENT TRUST LTD.** it was held :

> "Estoppel is a rule of equity. That rule has gained dimensions in recent years. A new class of estoppel i.e., promissory estoppel has come to be recognized by the courts in this country as well as in England. The full implication of 'promissory estoppel' is yet to be spelled out".

In **M.P. SUGAR MILLS Vs. STATE OF U.P.** it was held at para 33 as hereunder :

> **"**The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government; the vanaspati factory set up by the appellant was quite a profitable concern

and there was no prejudice caused to the appellant. This contention of the State is unsustainable and must be rejected. We do not think it is, necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This position was impliedly accepted by Denning J., in the High Trees Case when the learned Judge pointed out that the promise must be one "which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on". If a promise is "acted on", "such action, in law as in physics, must necessarily result in an alteration of position". This was again reiterated by Lord Denning in W.J. Alan & Co. Ltd. V. El Nasr Export and Import Co. (1972) 2 All.E.R. 127 at p.140 where the learned Law Lord made it clear that alteration of position "only means that he (the promisee) must have been led to act differently from what he would otherwise have done. And, if you study the cases in which the doctrine has been applied, you will see that all that is required is that the one should have acted on the belief induced by the other party". Viscount Simonds also observed in Tool Metal Mfg. Co. Limited v. Tungsten Electric co. Ltd. (1955) 2 All.E.R. 657 that ".....the gist of the equity lies in the fact that one party has by his conduct led the other to alter his position". The Judgment of Lord Tucker in the same case would be found to depend likewise on a fundamental finding of alteration of position, and the same may be said of that of Lord Cohen. Then again in Ajayi v. Briscoe (1964) 3 All.E.R. 556 (supra) Lord Hodson said : "This equity is, however, subject to the qualifications (a) that the other party has altered his position". The same requirement was also emphasized by Lord Diplock in Kammin's Ballrooms Ltd. v. Zenith Investments (Torguay) Ltd. (1970) 2 All.E.R. 871. What is necessary, therefore, is no more than that there should be alteration of position on the part of the promisee. The alteration of position need not involve any detriment to the promisee. If detriment were a necessary element, there would be no need for the doctrine of promissory estoppel because, in that event, in quite a few cases, the detriment would form the consideration and the promise would be binding as a contract. There is in fact not a single case in England where detriment is insisted upon as a necessary ingredient of promissory estoppel. In fact, in W.J.Alan & Co. Ltd. V. El.Nasr Export and Import Co. (supra), Lord Denning expressly rejected detriment

as an essential ingredient of promissory estoppel saying :

"A seller may accept a less sum for his goods than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance : See Central London Property Trust Ltd. V. High Trees House Ltd. (1956) 1 All.E.R. 256 and D & C. Builders Ltd. v. Rees (19650 3 All.E.R. 837). In none of these cases does the party who acts on the belief suffer any detriment. It is not a detriment, but a benefit to him to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it".

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. The classic exposition of detriment in this sense is to be found in the following passage from the Judgment of Dixon, J in the Australian case of Grundt v. Greate Boulder Pty. Gold Mines Ltd., (1938) 59 CLR 641 :

"……It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstandings, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own proginal change of position will operate as a detriment. His action or inaction must be such that, if the assumption

upon which he proceeded were shown to be wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice".

If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow to allow the promisor to go back upon his promise. It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. Here, the appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from M/s. De Smet (India) Pvt. Ltd., Bombay and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was therefore, bound on the principle of promissory estoppel to make good the representation made by it ……".

A similar question had been considered by this Court in **AERONAUTICS EMPLOYEES COOP. HOUSING SOCIETY LTD. Vs. THE GOVT. OF A.P., HYDERABAD AND OTHERS** where in at paras 11 and 12 it was held as hereunder :

"Had the Government told the management of the H.A.L. in the beginning itself in 1981 when vast tracts of land was readily available for construction purposes, the management would have explored alternative arrangements to provide housing accommodation to their employees. Because of the promise made by the State Government, the management, thinking that the promise would be acted upon, did not explore other possibilities. It is the promise of the Government that had altered the position of the petitioner-society. The doctrine of promissory estoppel also applies against the Government. It is

no defence for the Government to say that because of executive necessity, it need not keep up its promise. In M.P. Sugar Mills V. State of U.P. (AIR 1979 S.C. 621), the Supreme Court held (at p.643 of AIR):

"Where the Government makes a promise knowing or intending that it would be acted on by the promisee, and in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art.299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of Constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual.

It is true that if there is overriding public interest, it is always open to the Government to resile from the promise. In the present case, the file containing allotment of the land in favour of Karshaka Parishad had not been placed before me. The Constitutional validity of the Act by which the Karshaka Parishad was brought into being was questioned and a Division Bench of this Court on 1-9-1988 had struck down part of the Act and also set aside the appointment of the Chairman. The reappointment made subsequently was also struck down by this Court. No final decision was taken about the setting up of Karshaka Parishad. The learned Counsel for the petitioner has placed before me a copy of Telugu daily 'Eenadu' dated 15-4-1990 which contained a statement of the Hon'ble Minister for Agriculture that the Karshaka Parishad exists only on

paper. Even if Karshaka Parishad comes into existence, it cannot be said that the entire extent of Ac.645-16 guntas would be required for Krishak Nagar. In any event, having made a promise as far back as 1982 to the petitioner-society it is inequitable on the part of the Government not to act upon that promise. The extent of the land promised to the petitioner is only Ac.89-31 guntas out of the Ac.645-16 guntas covered by S.No.64 of Madhavapur village. Apart from the principle of promissory estoppel, in the interests of good government the commitment made to the management of the H.A.L. should be honoured. The employees of any Central Government public sector undertaking, after having been promised assignment of land, should not be subjected to disappointment on the ground of the policy of the Government that the State Government employees should be given preference in the matter of assignment of house sites. Apart from the legality of the governmental action, its legitimacy also is involved in a situation of the present type".

As can be seen from the averments made in the affidavit filed in support of the Writ Petition and the stand taken by the Government in the counter affidavit and also the correspondence in between the Governmental agencies and also the correspondence in between the petitioner and the Governmental agencies, it is clear that the proposals had been initiated way back in the year 1972. It is no doubt true that while invoking the doctrine of promissory estoppel public interest also may have to be kept in mind by Courts of law. It is also true that as can be seen from the conduct, there are certain lapses on the part of the petitioner too by non-complying with certain conditions which had been specified way back in the year 1972. The Government, with a view to raise necessary finance for construction of Collectorate buildings appears to have taken this decision to

further proceed with the sale of land by public auction and it is pertinent to note that large extent of land is available inclusive of the land in question or controversy. Courts no doubt are expected to adopt cautious approach while applying the equity doctrine of promissory estoppel. A balanced view may have to be taken between interest of the Government, public interest and also the effect of promise, the effect, if the promise is directed to be enforced by invoking the doctrine. The object of the Government appears to be one of pooling up the finance for construction of buildings by the Government and at the best the question which may be of some importance is the fixing of the market value by private negotiations with the petitioner vis-à-vis the value which would be secured if this property is sold by auction. In the large extent of land available a small portion alone was proposed to be allotted to the petitioner society. As per the correspondence available, the Government appears to be more interested in securing the maximum possible price. It is needless to say that in the changed situation, a just and reasonable market value may have to be fixed by the parties. Keeping in view the lapse of time and also the slight lapse on the part of the petitioner society and the inaction thereof in complying with certain of the conditions specified way back in 1972 and also keeping in view the policy decision taken by the Government, it is a fit case where the petitioner and the revenue authorities may have to further

negotiate on the market value and fix a just and reasonable market value and arrive at a decision. However, it is made clear that while fixing the just and reasonable market value, the Government may have to take into consideration that the members of the petitioner society are employees, present and retired of A.P.S.R.T.C., and these employees also have been serving the public. In **SHANTISTAR Vs. NARAYAN** while dealing with right to have reasonable residence it was held that the same would fall under Article 21 of the Constitution of India.

Taking into consideration the over all facts and circumstances, this Court is of the considered opinion that in view of the fact that the initial proposals had been made way back in the year 1972, it would be totally unjust on the part of the Government to go back on the promise and the same may have to be finalized and hence there is no justification on the part of the Government to proceed with the proposed auction of the subject matter of the Writ Petition withdrawing the prior proposals under the guise of policy decision. However, this Court does hope that just and reasonable market value would be arrived at by parties taking into consideration that the members of the petitioner-society are employees, present and retired of A.P.S.R.T.C., who too are serving the public. In view of the facts and circumstances the respondents are directed not to further proceed with the proposed auction relating to the lands in question specified supra and the petitioner and the respondents are directed

to negotiate and arrive at a just and reasonable market value keeping in view the lapse of time and arrive at a decision within a period of three months from the date of receipt of the order and further finalise the allotment within a further period of two months thereafter. This Court does also hope that these directions would safeguard the interests of the Government and also the petitioner-society as well.

Accordingly, the Writ Petition is allowed to the extent indicated with the above directions. In the peculiar facts and circumstances, this Court makes no order as to costs.

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P.S.Narayana.,J

L.R. copy to be marked : YES / NO

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Second day of December Two Thousand and Four.

REGISTRAR

To:

1. **Government of Andhra Pradesh Rep. by its Secretary, Revenue Department, Secretariat, Hyderabad.**
2. **The District Collector, Kurnool.**
3. **Revenue Divisional Officer, Kurnool.**
4. **Mandal Revenue Officer, Kurnool.**
5. **2 C.Cs. to Government Pleader for Revenue,**

   High Court of A.P., High Court Buildings,

   Hyderabad.
6. **2 C.D. copies**